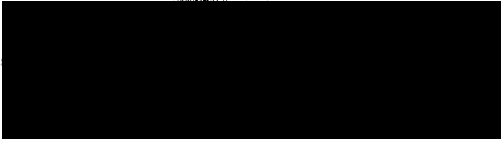


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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536



U.S. Citizenship
and Immigration
Services



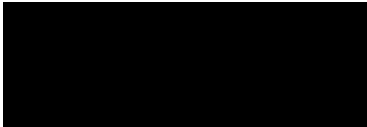
APR 12 2014

FILE: [REDACTED] Office: HOUSTON Date:

IN RE: Obligor:
Bonded Alien: [REDACTED]

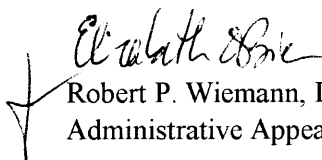
IMMIGRATION BOND: Bond Conditioned for the Delivery of an Alien under Section 103 of the
Immigration and Nationality Act, 8 U.S.C. § 1103

ON BEHALF OF OBLIGOR:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Director
Administrative Appeals Office

Identifying data deleted to
prevent disclosure of unwarranted
invasion of personal privacy

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DISCUSSION: The delivery bond in this matter was declared breached by the District Director, Houston, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record indicates that on September 18, 1997, the obligor posted a \$2,000 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated April 1, 2003 was hand delivered to the obligor. The notice demanded the bonded alien's surrender to the Immigration and Naturalization Service (legacy INS), now Immigration and Customs Enforcement (ICE), at 9:00 a.m. on April 30, 2003, at [REDACTED]. The obligor failed to present the alien, and the alien failed to appear as required. On May 1, 2003, the district director informed the obligor that the delivery bond had been breached.

On appeal, counsel states that on October 30, 2002, the Board of Immigration Appeals (BIA) dismissed the alien's appeal from an order of deportation. Thus, according to counsel, this is a pre-Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA) case. Counsel then asserts that under the prior section 242 of the Immigration and Nationality Act (the Act), the district had 180 days to execute the removal order. Counsel further asserts that since the district demanded a surrender of the alien 182 days after the BIA order, the district's detention authority expired, and the obligor is entitled to cancellation of the bond. This argument is meritless.

The record reflects that a removal hearing was held on February 28, 2001 and the alien was ordered removed. The BIA dismissed his appeal of that order on October 30, 2002. Thus the orders directing the alien's departure occurred subsequent to the effective date of IIRAIRA.

The previous version of section 242 of the Act provided detention authority to ICE for six months following a final order of deportation. IIRAIRA was passed on September 30, 1996 and became effective on April 1, 1997. IIRAIRA added section 241(a)(1) of the Act, 8 U.S.C. § 1231(a)(1). It provides generally that the Secretary shall remove an alien from the United States within 90 days following the order of removal, with the 90-day period suspended for cause. During the 90-day removal period, the Secretary shall exercise detention authority by taking the alien into custody and canceling any previously posted bond unless the bond has been breached or is subject to being breached. Section 241(a)(2) of the Act, 8 C.F.R. § 241.3(a).

Section 241(a)(3) provides that if an alien does not leave or is not removed during the 90-day period, the alien shall be subject to supervision under regulations prescribed by the Secretary. Posting of a bond may be authorized as a condition of release after the 90-day detention period. 8 C.F.R. § 241.5(b). Thus, the Secretary has the continuing authority to require aliens to post bond following the 90-day post-order detention period.

Counsel posits that once ICE no longer has detention authority over the alien, the delivery bond must terminate. However, this is contrary to the holdings of *Zadvydas v. Davis*, 533 U.S. 678 (2001) and *Doan v. INS*, 311 F.3d 1160 (9th Cir. 2002). In *Zadvydas*, the Supreme Court expressly recognized the authority of the legacy INS to require the posting of a bond as a condition of release after it lost detention authority over the alien, even though a bond was not provided as a condition of release by the statute. In *Doan*, the 9th Circuit held the legacy INS had the authority to require a \$10,000 delivery bond in a supervised release context even though it did not have detention authority. These cases arose in the post-removal period and make clear that detention authority is not the sole determining factor as to whether ICE can require a delivery bond.

The obligor is bound by the terms of the contract to which it obligated itself. Under the terms of the Form I-352 for bonds conditioned upon the delivery of the alien, the obligor contracted to cause the alien to be produced or to produce himself/herself . . . upon each and every written request until *exclusion/deportation/removal proceedings . . . are finally terminated.*" (emphasis added). Thus, the obligor is bound to deliver the alien by the express terms of the bond contract until either exclusion, deportation or removal proceedings are finally terminated, or one of the other conditions occurs.

The bond contract provides that it may be canceled when (1) exclusion/deportation/removal proceedings are finally terminated; (2) the alien is accepted by ICE for detention or deportation/removal; or (3) the bond is otherwise canceled. The circumstances under which the bond may be "otherwise canceled" occur when the Secretary or the Attorney General imposes a requirement for another bond, and the alien posts such a bond, or when an order of deportation has been issued and the alien is taken into custody. As the obligor has not shown that any of these circumstances apply, the bond is not canceled.

It is noted that the present record contains evidence that a properly completed questionnaire was forwarded to the obligor with the notice to surrender pursuant to the Amwest/Reno Settlement Agreement, entered into on June 22, 1995 by the legacy INS and Far West Surety Insurance Company.

Delivery bonds are violated if the obligor fails to cause the bonded alien to be produced or to produce himself/herself to an immigration officer or immigration judge, as specified in the appearance notice, upon each and every written request until removal proceedings are finally terminated, or until the said alien is actually accepted by ICE for detention or removal. *Matter of Smith*, 16 I&N Dec. 146 (Reg. Comm. 1977).

The regulations provide that an obligor shall be released from liability where there has been "substantial performance" of all conditions imposed by the terms of the bond. 8 C.F.R. § 103.6(c)(3). A bond is breached when there has been a substantial violation of the stipulated conditions of the bond. 8 C.F.R. § 103.6(e).

8 C.F.R. § 103.5a(a)(2) provides that personal service may be effected by any of the following:

- (i) Delivery of a copy personally;
- (ii) Delivery of a copy at a person's dwelling house or usual place of abode by leaving it with some person of suitable age and discretion;
- (iii) Delivery of a copy at the office of an attorney or other person including a corporation, by leaving it with a person in charge;
- (iv) Mailing a copy by certified or registered mail, return receipt requested, addressed to a person at his last known address.

The evidence of record indicates that the Notice to Deliver Alien was hand delivered to the obligor at [REDACTED]. This notice demanded that the obligor produce the bonded alien on April 30, 2003. Consequently, the record clearly establishes that the notice was properly served on the obligor in compliance with 8 C.F.R. § 103.5a(a)(2)(iv).

Furthermore, it is clear from the language used in the bond agreement that the obligor shall cause the alien to be produced or the alien shall produce himself to an ICE officer upon each and every request of such officer until removal proceedings are either finally terminated or the alien is accepted by ICE for detention or removal.

It must be noted that delivery bonds are exacted to insure that aliens will be produced when and where required by ICE for hearings or removal. Such bonds are necessary in order for ICE to function in an orderly manner. The courts have long considered the confusion which would result if aliens could be surrendered at any time or place it suited the alien's or the surety's convenience. *Matter of L-*, 3 I&N Dec. 862 (C.O. 1950).

After a careful review of the record, it is concluded that the conditions of the bond have been substantially violated, and the collateral has been forfeited. The decision of the district director will not be disturbed.

ORDER: The appeal is dismissed.